

PART 773—SURFACE TRANSPORTATION PROJECT DELIVERY PILOT PROGRAM

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APPENDIX A TO PART 773—FHWA ENVIRONMENTAL RESPONSIBILITIES THAT MAY BE ASSIGNED UNDER SECTION 6005.

AUTHORITY: 23 U.S.C. 315 and 327; 49 CFR 1.48.

SOURCE: 72 FR 6470, Feb. 12, 2007, unless otherwise noted.

§ 773.101 Purpose.

The purpose of this part is to establish the requirements, as directed by 23 U.S.C. 327(b)(2), relating to the information which must be contained in an application by a State to participate in the program allowing the Secretary to assign, and a State Department of Transportation (State DOT) to assume, responsibilities for compliance with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4347) and other Federal environmental laws pertaining to the review or approval of a highway project(s).

§ 773.102 Applicability.

This part applies to any State DOT eligible under the provisions of 23 U.S.C. 327 that submits an application for participation in the program.

§ 773.103 Definitions.

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) are applicable to this part. As used in this part:

Classes of highway projects means either a defined group of highway projects or all highway projects to which Federal environmental laws apply.

Federal environmental law means any Federal law or Executive Order (EO) under which the Secretary of the United States Department of Transportation has responsibilities for environ-

mental review, consultation, or other action with respect to the review or approval of highway projects. A list of the Federal environmental laws for which a State DOT may assume the responsibilities of the Secretary under this pilot program include, but are not limited to, the list of laws contained in Appendix A to this Part. But, under 23 U.S.C. 327(a)(2)(B), the Secretary's responsibility for conformity determinations required under section 176 of the Clean Air Act (42 U.S.C. 7506) and the responsibility imposed on the Secretary under 23 U.S.C. 134 and 135 are not included in the program. Also, Federal environmental law includes only laws that are inherently environmental and does not include responsibilities such as Interstate access approvals (23 U.S.C. 111).

Highway project means any undertaking to construct (including initial construction, reconstruction, replacement, rehabilitation, restoration, or other improvements) a highway, bridge, or tunnel, or any portion thereof, including environmental mitigation activities, which is eligible for assistance under title 23 of the United States Code. A highway project may include an undertaking that involves a series of contracts or phases, such as a corridor, and also may include anything that may be constructed in connection with a highway, bridge, or tunnel. However, the term highway project does not include any of the priority projects designated under Executive Order 13274; does not include any Federal Lands Highway project unless such project is to be designed and constructed by the State DOT; and does not include projects that are funded under chapter 53 of title 49, United States Code. Nothing in this part is intended to limit the consideration of any alternative in conducting an environmental analysis under any Federal environmental law, even if the particular alternative would provide for a project that is excluded under this section and may consider and include that alternative within the range of alternatives for a highway project.

Program means the "Surface Transportation Project Delivery Program" established under 23 U.S.C. 327, which allows up to five State DOTs to assume

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all or part of the responsibilities for environmental review, consultation, or other action required under any Federal environmental law pertaining to the review or approval of one or more highway projects.

§ 773.104 Eligibility.

(a) Only a State DOT of a State is eligible to participate in the program.

(b) The program is limited to a maximum five State DOTs, including the State DOTs of Alaska, California, Ohio, Oklahoma and Texas as the five participant States. Should any of these five State DOTs choose not to apply, have its participation terminated, or withdraw from the pilot program, another State DOT may be selected.

§ 773.105 Statements of interest.

(a) The State DOTs of Alaska, California, Ohio, Oklahoma and Texas are given priority for participation in the program.

(b) Within sixty days of March 14, 2007, the State DOTs of Alaska, California, Ohio, Oklahoma and Texas shall submit a statement of interest to participate in the program. The statement of interest shall declare that the State DOT intends to submit an application to participate in the pilot program.

(c) Should any of the State DOTs of Alaska, California, Ohio, Oklahoma and Texas fail to submit a statement of interest by May 14, 2007 or decline participation in the pilot program, such State DOT shall no longer be given priority consideration for selection in the program and its application will be selected in competition with other State DOTs.

(d) Should any of the State DOTs of Alaska, California, Ohio, Oklahoma and Texas submit a statement of interest declaring their intent to participate in the program, the State shall actively work to develop and submit its application and meet all applicable program criteria (including the enactment of necessary State legal authority).

§ 773.106 Application requirements for participation in the program.

(a) Each State DOT wishing to participate in the program must submit an application to the FHWA.

(b) Each application submitted to the FHWA must contain the following information:

(1) The highway project(s) or classes of highway projects for which the State is requesting to assume FHWA's responsibilities under NEPA. The State DOT must specifically identify, in its application, each project for which a draft environmental impact statement has been issued prior to the submission of its application to the FHWA;

(2) The specific responsibilities for the environmental review, consultation, or other action required under other Federal environmental laws, if any, pertaining to the review or approval of a highway project, or classes of highway projects, that the State DOT wishes to assume under this program. The State DOT must also indicate whether it proposes to phase-in the assumption of these responsibilities;

(3) For each responsibility requested in paragraphs (b)(1) and (b)(2) of this section, the State DOT shall submit a description in the application detailing how it intends to carry out these responsibilities. The description shall include:

(i) A summary of State procedures currently in place to guide the development of documents, analyses and consultations required to fulfill the environmental responsibilities requested. The actual procedures should be submitted with the application, or if available electronically, the Web link must be provided;

(ii) Any changes that have been or will be made in the management of the environmental program to provide the additional staff and training necessary for quality control and assurance, appropriate levels of analysis, adequate expertise in areas where responsibilities have been requested, and expertise in management of the NEPA process;

(iii) A discussion of how the State DOT will verify legal sufficiency for the environmental document it produces; and

(iv) A discussion of how the State DOT will identify and address those projects that would normally require FHWA headquarters prior concurrence of the FEIS under 23 CFR 771.125(c).